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ABSTRACT

In February 1993, a General Accounting Office (GAO) representative testified before a U.S. Senate subcommittee regarding implementation of the Worker Readjustment and Retraining Notification Act (WARN), which requires that certain employers give their workers and state/local governments 60 days' notice of impending plant closures or layoffs. The testimony indicated that, according to an 11-state GAO analysis, more than half of employers employing more than 100 persons and planning layoffs of 50 individuals or more were not even required by WARN to provide advance notices. Even when closures/layoffs did appear to meet WARN requirements, fewer than half of the employers provided advance notice, and only 29% of employers providing notification gave the required 60 days' notice. Of those employers who did give advance notification of closures/layoffs, about 47% believed that advance notice helped their workers find new jobs sooner, 61% reported that advance notification cost less than $500, and 29% reported productivity declines after issuing advance notification. Lawsuits are the only enforcement tool presently available to workers/local communities under WARN, and few have been filed. It was therefore recommended that Congress consider granting the Department of Labor responsibility and authority to enforce WARN. (A WARN decision matrix is appended.) (MN)

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Testimony

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DISLOCATED WORKERS

Implementation of the Worker Adjustment and Retraining Notification Act (WARN)

Statement of Linda G. Morra,
Director, Education and Employment Issues,
Human Resources Division

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SUMMARY OF TESTIMONY BY LINDA G. MORRA
DISLOCATED WORKERS: IMPLEMENTATION OF THE
WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT (WARN)

The Department of Labor has estimated that 3,100 plant closures and mass layoffs, each affecting 50 or more workers, occurred in 1990 and nearly 3,900 in 1991. These closures and layoffs resulted in over 1 million workers losing their jobs. Past research has shown that when assistance is provided to dislocated workers early, workers get new jobs sooner and earn more than they would have without early intervention. To help achieve early intervention, the Congress enacted WARN, which requires that certain employers give their workers and state and local government 60 days' notice of an impending closure or layoff.

MANY LAYOFFS EXCLUDED FROM NOTICE REQUIREMENT. WARN excludes many major layoffs from the WARN notice requirement. More than half of the employers in our 11 state analysis with 100 or more workers that had a layoff affecting 50 or more of their workers were not required to provide notice. The major reason for excluding these layoffs was the requirement that the layoff affect one-third of the work force or 500 or more workers.

MANY EMPLOYERS DID NOT FILE WARN NOTICES. Even when closures appeared to us to meet the WARN criteria, employers did not provide advance notice for half the events we analyzed. When they did provide notice, 29 percent did not give workers the required 60 days' notice.

EMPLOYERS CITED BENEFITS FOR WORKERS, BUT SOME BUSINESSES REPORTED NEGATIVE EFFECTS. Our survey of employers who gave advance notice showed that about 47 percent believed their workers found new jobs sooner as a result of getting advance notice. Despite predictions that providing notice to workers would be costly, 61 percent of the employers surveyed reported the costs to be less than $500. However, 29 percent reported productivity declines after giving notices to their workers.

NEED TO IMPROVE ENFORCEMENT OF WARN. Lawsuits are the only enforcement tool available to workers or local communities under WARN. However, despite the possible violations of WARN, few lawsuits have been filed since the law was enacted. The costs associated with a lawsuit, the limited incentives, and the uncertainty about outcomes make using the courts as an enforcement mechanism difficult. We suggest that the Congress consider giving responsibility and authority for enforcing the law to the Department of Labor.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the results of our work concerning the Worker Adjustment and Retraining Notification Act (WARN). The law requires that GAO report on the implementation and effects of WARN. Today, we are issuing our report. It focuses on three areas: (1) the extent to which closures and layoffs are covered by WARN, (2) the extent to which employers provided notices of such events, and (3) employers' views of the impact of WARN on their workers and businesses.

The Department of Labor has estimated that 3,100 plant closures and mass layoffs, each affecting 50 or more workers, occurred in 1990 and nearly 3,900 in 1991. These resulted in over 1 million workers losing their jobs. On any given day the news media report corporate downsizing, restructuring, and relocations that result in workers losing their jobs. Many of these dislocated workers need help to find a new job. Whether this assistance succeeds often depends on how early help is provided by state and local agencies. Past research has shown that far more workers seek assistance when help is available before or at the time of job loss and that workers who receive assistance often get jobs sooner and earn more than they would without such help. To help achieve early intervention, WARN was enacted in 1988. The law requires that certain employers give workers and state and local government officials 60 days' notice of an impending closure or layoff.

However, most workers who lose their jobs because of a closure or layoff still do not receive any advance notice. As written, the law excludes many major layoffs from the notice requirement. Even when events appeared to us to meet the WARN criteria, our study showed that many employers did not provide a notice. And, when employers provided notice to their workers they often provided less than 60 days' notice as prescribed by WARN.

BACKGROUND

WARN represents an attempt to compromise between the needs of workers and local governments for advance notice and the concerns of businesses that they may not be able to predict a layoff or closure and that providing notice could be costly or could result in lost production. WARN requires a notice for closures that affect 50 or more workers and layoffs that either (1) affect 50 or more workers who represent one-third or more of the work force or (2) involve 500 or more workers. However, as shown in attachment I, smaller employers (those with less than 100 workers) are not

required to give notice of closures or layoffs.[1] Employers with 100 or more workers also may be exempt from filing a WARN notice in certain instances, such as when work ends upon completion of a contract.

WARN also allows employers to provide less than 60 days' notice under certain exceptions, such as when (1) employers are seeking new customers or trying to raise capital or (2) the closure or layoff is due to unforeseen business circumstances or natural disasters. Employers relying on these exceptions must state so in their notice.

The Congress did not assign any agency the responsibility for enforcing WARN. The Department of Labor, however, was required to prepare implementing regulations. In addition, Labor developed educational programs and information about WARN to aid in understanding the law. However, Labor does not have the responsibility or authority to enforce the requirements of WARN. The federal courts are the sole enforcement tool available under WARN.

To review the implementation of WARN and its effects on employers and workers, we used several approaches. To determine the number of closures and layoffs that appeared subject to WARN, we analyzed 194 closures and 1,412 layoffs identified by the Bureau of Labor Statistics' Mass Layoff Statistics (MLS) Program in 11 states--Alabama, Florida, Illinois, Kentucky, Minnesota, New Jersey, New York, Pennsylvania, Texas, Washington, and Wisconsin.[2] We analyzed each event to assess whether (1) the employer had 100 or more workers, (2) the event resulted in the layoff of 50 or more workers and one-third of the work force, and (3) the reason for the event justified an exemption from the WARN notice requirement. However, the Bureau's program does not generate detailed information about all the circumstances involved in each event, and the Bureau's confidentiality pledge to employers prevented us from contacting the employers directly. Therefore, we could not conclusively determine whether events that appeared to meet the WARN criteria actually met each provision of the law.

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[1]Bureau of the Census data show that about 98 percent of companies in the United States employed less than 100 workers. However, they employ only 55 percent of the work force.

[2]The 11 states in our analysis accounted for 55 percent of the closures and layoffs reported in the 1990 MLS program. However, the 1990 MLS program did not collect data from California, Indiana, Maryland, Michigan, Ohio, and Oregon. The MLS program, the only source of information on closures and layoffs, was eliminated in the FY 1993 budget.

To determine how many employers provided advance notice of the closures that appeared to meet the WARN criteria, we matched the reported closures with notices filed with state dislocated worker units (DWUs). We also reviewed a nationwide sample of WARN notices for timeliness and completeness of information. In addition, we surveyed the employers who filed the WARN notices selected in our national sample of notices about the effects of advance notice on their businesses and their workers. We also talked with staff from several states' dislocated worker units, as well as several groups of dislocated workers.

MANY LAYOFFS EXCLUDED FROM NOTICE REQUIREMENTS

Our analysis of layoffs in 1990 showed that 64 percent of the layoffs that affected 50 or more workers in facilities employing at least 100 workers were excluded from WARN's notice requirement.

For the 11 states in our analysis, the MLS program reported 1,412 layoffs that affected 50 or more workers. We eliminated 762 layoffs because the employer had less than 100 workers, the employee level was unknown, or the event was a seasonal layoff. Of the remaining 650 events, we determined that 317 were excluded from WARN's notice requirements because the event did not affect one-third of the work force and 98 were excluded because of other exemptions. This left 235 layoffs that appeared to meet the WARN criteria (see table 1).

Table 1: Identification of Layoffs Meeting WARN Criteria

Layoffs affecting 50 or more workers	1,412
Layoffs where the employer had less than 100 workers or the employee level was unknown or where it was seasonal	- 712
Layoffs meeting minimum size requirement	650
Layoffs, exempt, one-third of the work force not affected	- 317
Layoff exempt for other reasons	- 98
Layoffs appearing to meet WARN criteria	235

The effect of the one-third rule is particularly visible in the case of large layoffs. Of the 115 layoffs in our analysis affecting 250 or more workers, for example, 47 were exempt from WARN. Of these, 27 were exempt because they did not affect one-third of the work force. For example, a manufacturer laid off 475 of 1,700 workers, but was not required to provide a WARN notice because the 475 workers did not represent one-third of the work force.

MANY EMPLOYERS DID NOT FILE WARN NOTICES WHEN THEY EXPERIENCED A CLOSURE

Even when closures appeared to us to meet WARN criteria, employers did not provide advance notice to state dislocated worker units for half the 149 closures identified in our 11 state analysis. To determine who provided notice under WARN, we matched all 149 closures that appeared to meet the WARN criteria with notices on file with the state's dislocated workers unit. We found that 54 percent of the employers did not provide a notice to the state.

In addition, many employers who gave notice did not provide the required 60 days' advance warning. To determine the timeliness of notices, we analyzed 397 notices randomly selected nationwide from notices filed with state DWUs for closures and layoffs that occurred in 1990. We found that, based on the date of the notice, about 29 percent of the employers did not give workers 60 days' notice. Of those employers providing late notices, nearly half gave less than 30 days' notice.

Some employers were even slower in providing notice to state DWUs. As discussed earlier, the success of worker assistance is often related to how early help is provided. Notice to the DWU is needed to provide time to plan and implement programs to achieve early intervention. However, for the 397 notices in our sample, about 54 percent were received by the state DWUs with less than 60 days' notice. About one-fourth of these notices gave DWUs less than 30 days' notice. And, in 20 of these cases, the notices did not reach the DWUs until after the closure or layoff occurred.

EMPLOYERS CITED BENEFITS FOR WORKERS, BUT SOME BUSINESSES REPORTED NEGATIVE EFFECTS

Employers told us that advance notice under WARN appears to have had positive benefits for workers, but a negative impact on some employers. We surveyed a random sample of 397 employers nationwide who gave their workers advance notice of a closing or layoff. Of the 251 employers responding to the survey, about 47 percent reported that they believed that their workers found new jobs

sooner as a result of getting the advance notice. Several workers and worker representatives told us that the earlier they knew of the closure or layoff, the sooner they could begin to accept their job loss and begin looking for new employment.

Despite predictions that providing advance notice to workers would be costly, most employers surveyed reported the costs to prepare notices were lower than predicted. About 61 percent of the employers in our survey reported that the costs associated with giving their workers notice was less than $500.

Some employers, however, did report productivity declines after giving their workers advance notice of a closure or layoff. About 29 percent of the employers in our survey said that productivity decreased after giving notices to their workers. Some employers reported that the loss in production appeared related to lower worker motivation, increased use of paid leave, or the early loss of management or nonmanagement workers.

NEED TO IMPROVE ENFORCEMENT OF WARN

Lawsuits are the only remedy available for workers or local communities under WARN because no federal or state agency has the authority to enforce the law. However, despite the possible violations, few lawsuits have been filed since the law was enacted. As of December 1992, we were aware of 66 lawsuits that had been filed. The cost associated with a lawsuit, the limited incentives, and the uncertainty about outcomes make using the courts as an enforcement mechanism difficult.

Attorneys and local officials we contacted cited cost as one of the reasons why few suits have been filed. Attorneys who had filed suits on behalf of workers reported that workers generally were hesitant to file because of the expense of hiring an attorney. One local official said that communities may also be hesitant to file due to the up-front cost of researching and filing a lawsuit.

Limited incentive was also cited as a reason for so few lawsuits. Penalties under WARN are limited to a maximum of 60 days' back pay and benefits for workers--the amount of pay workers would have received had the employer provided them notice as required by WARN. Several local officials we interviewed stated that if they win, they could receive up to $500 per day for no more than 60 days, but they also would run the risk of being viewed as anti-business, which could hamper efforts to lure new business investment.

In addition, uncertainty about the outcome was cited as another reason for few lawsuits. Attorneys involved with WARN lawsuits told us that the lack of information about the circumstances surrounding the event reduces the chances that an attorney will

take the case because of the difficulty in determining if it has merit. Also, because of the complexity of the law and implementing regulations and the limited number of court cases to date, little case law has been established that could help attorneys assess the merit of a case.

CONCLUSIONS

The success of the employment assistance provided to dislocated workers is often related to how early help is provided to the workers. WARN was enacted to help assure that workers have the time to adjust to their dislocation and that state dislocated worker units have the time to plan and implement programs to help workers find new jobs as quickly as possible. However, as the law is written, many of the major layoffs are not covered and, given the high percentage of closures for which there was no notice or notices were late, the use of the courts as an enforcement mechanism does not appear to be working.

As the Congress considers ways to improve the implementation of WARN, we suggest that it consider giving the Department of Labor the specific responsibility and authority for enforcing the law's provisions.

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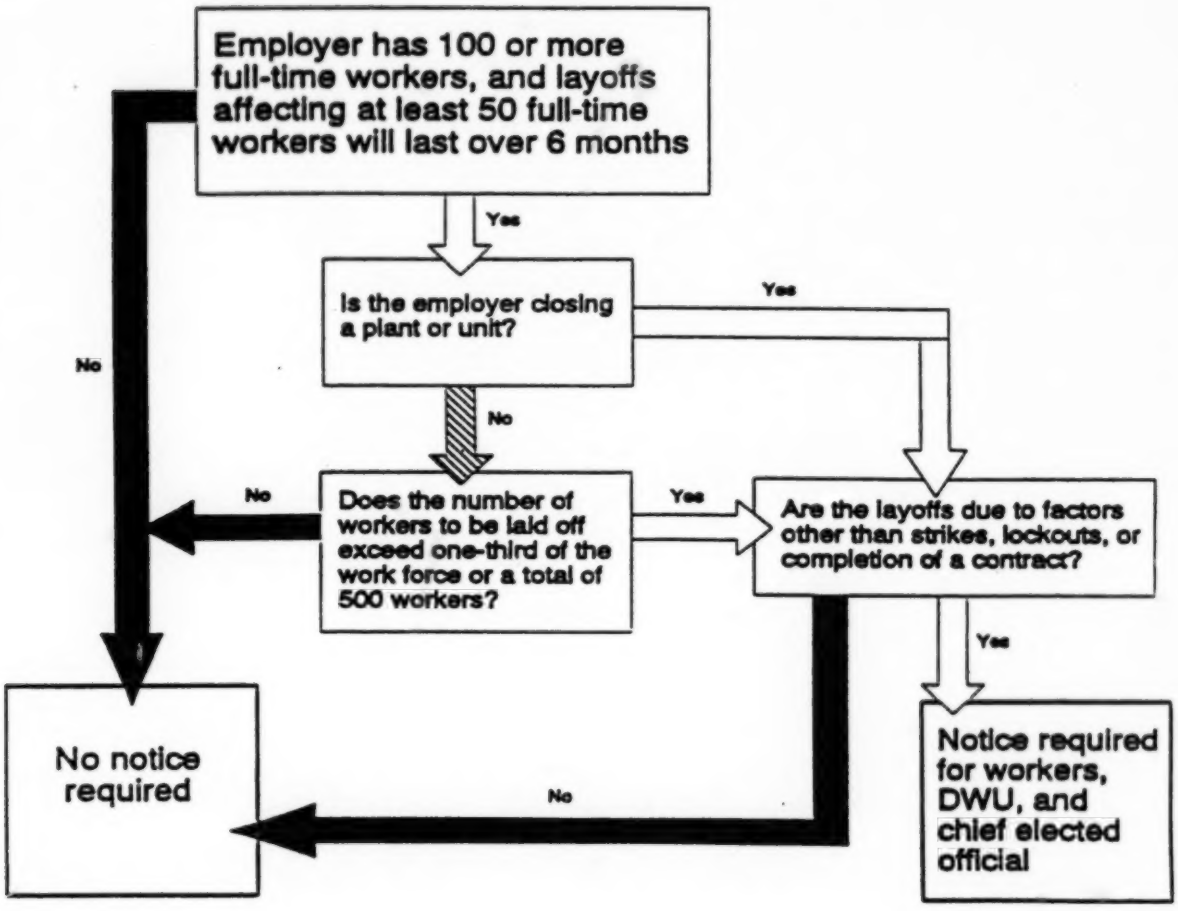
This concludes my prepared statement. I will be happy to answer any questions you or other members of the Subcommittee may have.

ATTACHMENT I

WARN DECISION MATRIX


Employer has 100 or more full-time workers, and layoffs affecting at least 50 full-time workers will last over 6 months
Yes
No
Is the employer closing a plant or unit?
Yes
No
No
Does the number of workers to be laid off exceed one-third of the work force or a total of 500 workers?
Yes
Are the layoffs due to factors other than strikes, lockouts, or completion of a contract?
Yes
No notice required
No
Notice required for workers, DWU, and chief elected official

Note: The matrix provides an overview of how employers, workers, and chief elected officials can determine if a closure or layoff meets the criteria for filing a WARN notice. Labor's Final Rules describe in more detail various situations where WARN applies. See 54 Fed.Reg. 16042 (1989) (codified at 20 C.F.R. part 639).

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